

State of California  
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text**

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE  
REGULATION FOR IN-USE OFF-ROAD DIESEL-FUELED FLEETS**

Public Hearing Date: July 23, 2009  
Public Availability Date: April 15, 2010  
Deadline for Public Comment: April 30, 2010

At its July 23, 2009, public hearing, the Air Resources Board (ARB or Board) approved amendments to sections 2449, 2449.1, and 2449.2, title 13, California Code of Regulations (CCR) of the In-Use Off-Road Diesel-Fueled Fleets regulation (regulation). The regulation is intended to significantly reduce emissions of diesel particulate matter (PM) and oxides of nitrogen (NO<sub>x</sub>) from the over 140,000 off-road diesel vehicles that operate in California. The reductions are necessary to meet State and federal air quality standards and support the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, which was adopted by the Board on September 30, 2000. To achieve the required reductions, the off-road regulation requires fleet owners to accelerate turnover to cleaner engines and install exhaust retrofits.

**The Board's Action**

At the July 23, 2009 hearing, the Board approved amendments implementing Assembly Bill 8 2X (AB 8 2X) that was signed by the Governor on February 20, 2009, and directed ARB to make several amendments to the regulation to provide economic relief to the construction industry, which is currently facing difficult economic times due to the current global recession. The AB 8 2X amendments were formally adopted by the ARB Executive Officer on December 3, 2009 and became operative on that date. Board Resolution 09-50 and all other regulatory documents for the AB 8 2X amendments are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2009/offroad09/offroad09.htm>

At the July 23 hearing, the Board also approved amendments that would provide additional incentives to spur early actions by fleets to reduce emissions, and would provide several minor clarifications to the regulation. This notice describes proposed modifications to those amendments.

In addition to the amendments discussed in this notice, it is likely that additional changes will be proposed to the regulation within the next six months. The ARB Executive Officer held a hearing on March 11, 2010, to solicit comments regarding whether additional changes to the regulation are necessary to address

the current economic recession. At the Board's April 22, 2010, meeting, staff plans to update the board regarding the March 11 hearing and broadly identify what additional relief can be considered that would still meet the State's air quality goals and commitments. If the Board's direction is to grant additional relief, staff then plans to hold public workshops in May and June, and then return to the Board late this summer to propose appropriate changes to the regulation.

### **Summary of Proposed Modifications**

#### **2449(e)(8) VDECS That Impairs Safe Operation of Vehicle**

At the Board's direction, staff is proposing to replace the word "impossible" with the phrase "technologically infeasible," which more accurately reflects the basis for exempting vehicles when a verified diesel emission control strategy (VDECS) conflicts with federal or state requirements for safety or health. Staff is also clarifying that when the regulation specifies findings of a responsible federal or state agency, it means the findings of a federal or state agency that promulgates safety requirements.

#### **2449.1(a)(2)(A)1. Turnover Rate**

Staff is proposing to clarify that fleets that are not subject to turnover requirements in 2012, including fleets that qualify for a turnover exemption under section 2449.1(a)(2)(A)5 (e.g., fleets comprised solely of Tier 1 and higher vehicles), are not required to meet the 14.4 percent turnover rate in 2013 that applies, in general, to large fleets that did not meet the NOx fleet average target in 2011 or 2012. To avoid inadvertently penalizing fleets that were not subject to turnover requirements in 2012, including those that have phased out their oldest, dirtiest engines (i.e., fleets qualifying for the section 2449.1(a)(2)(A)5 exemption), they will be treated like medium fleets and those large fleets that have met the NOx fleet average target in 2012, and will be subject to the original eight percent per year turnover rate.

Staff is also proposing to clarify that the NOx BACT turnover rate increases from eight to ten percent per year beginning in the 2016 compliance year (i.e., a fleet would be required to turn over ten percent of its fleet horsepower between March 1, 2015 and March 1, 2016 to fulfill the March 1, 2016 NOx BACT compliance requirements). Due to an error in the regulatory documents for the AB8 2X amendments, section 2449.1(a)(2)(A)1. mistakenly indicated the ten percent per year turnover rate would start in 2015 (a year early). Staff proposes to correct this error.

#### **2449.1(a)(2)(A)3. Order of Turnover**

Staff is proposing to clarify that fleets may obtain NOx credit for VDECS verified to reduce NOx emissions that are installed on an engine, irrespective of the engine's tier. To ensure that fleets phase their oldest, dirtiest engines out of their fleets first, the regulation, as presently operative, restricts fleets from obtaining NOx credit for the turnover of higher tier engines until all Tier 0 and Tier 1 engines that are not subject to PM emission standards have been turned over. This order of turnover was intended to apply only to fleets that turn over vehicles to comply with the regulation's NOx

performance requirements and not to fleets that elect to comply by installing NOx VDECS. Staff has, however, determined that NOx reductions achieved through use of VDECS on older, dirtier engines are also beneficial and should be encouraged. .

#### **2449.2(a)(2)(A)1. PM Retrofit Rate**

Staff is proposing to clarify that fleets that are not subject to retrofit requirements in 2012 are not required to meet the 36 percent retrofit rate in 2013 that applies, in general, to large fleets that elected to but that did not meet the PM fleet average target in 2011 or 2012. To avoid inadvertently penalizing fleets that were not subject to retrofit requirements in 2012, such fleets will be subject to the presently operative 20 percent per year retrofit rate.

#### **The Modified Text Being Made Available and the Public Comment Process**

**Modified Text Being Made Available:** Attachment 1 to this notice contains modifications to the text, with proposed amendments, that were considered and approved by the Board on July 23, 2009, but that date, have not yet been formally adopted by the Board as amendments implementing AB 8 2X (the amendments of which are not subject to the Administrative Procedure Act (APA), Government Code section 36940 et seq.), and have not yet become legally operative. The presently operative regulatory text is set forth below in normal type. Those amendments were adopted by the Board and became operative on December 3, 2009. The presently operative text also includes the amendments adopted by the Board on January 22, 2009, which were approved by the Office of Administrative Law on December 31, 2009. The January 2009 amendments were reflected in the Proposed Regulation Order for the July 23, 2009 hearing in **bold underline** and ~~**bold underline**~~, but, as stated, are not so reflected in Attachment 1. (A copy of the presently operative regulation with the January 2009 and July 23, 2009 AB 8 2X amendments is posted on ARB's website at: <http://www.arb.ca.gov/msprog/ordiesel/documents/finalregorder-current.pdf>

The amendments that are subject to the APA, and were initially proposed to the Board at the July 2009 Board hearing, are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. Modifications that are proposed here, subsequent to the July 2009 Board hearing, are shown in double underline to indicate additions and ~~double strikeout~~ to indicate deletions. The symbol "\*\*\*\*\*" indicates that regulatory language is not shown because it was not initially proposed for amendment or is not being modified.

The Resolution (09-50) and its attachments and Attachment 1 are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2009/offroad09/offroad09.htm>. Printed copies may be obtained by contacting Mr. Michael Baker, Mobile Source Control Division, at 916-323-2791 or email at mbaker@arb.ca.gov.

**Comments and Subsequent Action:** Written comments on the proposed modifications may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board, Air Resources Board  
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations will be considered by the Executive Officer.

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachment (1)

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at [www.arb.ca.gov](http://www.arb.ca.gov).*